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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1014.

CITIES SERVICE OIL COMPANY, as Owner of the SS. *Cities Service Baltimore,*

Petitioner,

against

THE ARUNDEL CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION

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Statement

At the end of petitioner's case in Admiralty in the District Court, respondent, believing that petitioner had failed to make out a case, rested. The following testimony was developed up to that point.

The *Cities Service Baltimore* got underway from anchorage at Stapleton off Staten Island at 0152 on December 2, 1957. The vessel was carrying petroleum products and was bound for Linden, New Jersey. On that voyage she was navigated by a Sandy Hook pilot (R. 23, 25, 67, 89, 123).

When the *Cities Service Baltimore* arrived at the Gulfport Reach in the Arthur Kill she says she blew various signals to Drill Boat No. 3, owned by respondent, which was working in the area ahead but that no answer was received (R. 4). Nevertheless, the *Cities Service Baltimore* continued underway intending to pass the drill boat, which was about midstream, to the eastward (R. 5).

While so proceeding the *Cities Service Baltimore* went aground within the channel (A-3 of petition).

The petition for writ of certiorari should be denied for the following reasons:

1. Petitioner contends that respondent's defense was not within the pre-trial order. Part viii c (R. 15-16) reads as follows:

> "(viii) The issues to be tried are formulated by the court as follows: * * *
>
> "(c) whether any action of the respondent or failure of action by the respondent caused or contributed to the grounding of the *Cities Service Baltimore;* and whether any action or failure of action on the part of the *Cities Service Baltimore* caused or contributed to the grounding of the *Cities Service Baltimore.*"

By showing that the grounding of the *Cities Service Baltimore* occurred within the channel, respondent was showing that no action by it nor any failure of action by it caused or contributed to the grounding and such defense is clearly within the pre-trial provision quoted immediately above.

2. Petitioner argues, page 13 of the petition, that "There was no affirmative testimony that the vessel

grounded within the channel." Such argument is incorrect. Both the District Court and the Court of Appeals referred to the evidence and held not only that there was affirmative evidence that the grounding occurred within the channel but also held that such evidence should be believed. The Court of Appeals in referring to that aspect of the case (A-3 of Petition) stated:

> "Judge Weinfeld's finding was directly supported by the testimony of Captain Thomas J. Port, the pilot in charge of the vessel at the time of the grounding. He testified that he believed that the ship went aground within the channel and that the cause of the accident was a lower than predicted tide. On the record before us, we cannot say that Judge Weinfeld's finding was clearly erroneous."

3. Although petitioner has made various arguments, in summation it can be stated that all of them are premised on the assertion that the grounding occurred outside of the channel and not within the channel. The same argument was made to the District Court and the District Court held that the grounding occurred within the channel. Likewise, the same argument was made before the Court of Appeals and the Court of Appeals held that the grounding occurred within the channel.

Petitioner offers no substantial reason for the granting of this petition. It has not shown any conflict of opinion nor has it shown that the issue is of such importance to warrant review by this Court. It is simply arguing about a disputed question of fact. The case falls within the law as laid down by *Magnum Co.* v. *Coty*, 262 U. S. 159 where this Court held, at page 163:

> "The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first to secure uniformity of decision

between those Courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort. *The jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing" (italics ours).*

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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